



General Assembly

Substitute Bill No. 3

January Session, 2011

* _____SB00003AGEPH_031011_____*

**AN ACT CONCERNING A CRIMINAL HISTORY AND PATIENT ABUSE
BACKGROUND SEARCH PROGRAM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-524 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2011*):

3 If, upon review, investigation or inspection pursuant to section 19a-
4 498, the Commissioner of Public Health determines that a nursing
5 home facility has violated any provision of section 17b-406, 19a-521 to
6 19a-529, inclusive, as amended by this act, 19a-531 to 19a-551,
7 inclusive, or 19a-553 to 19a-555, inclusive, section 19a-491a, 19a-491b,
8 19a-493a or 19a-528a, section 3 of this act or any regulation in the
9 Public Health Code or regulation relating to licensure or the Fire Safety
10 Code relating to the operation or maintenance of a nursing home
11 facility, which violation has been classified in accordance with section
12 19a-527, [he] the commissioner shall immediately issue or cause to be
13 issued a citation to the licensee of such nursing home facility.
14 Governmental immunity shall not be a defense to any citation issued
15 or civil penalty imposed pursuant to sections 19a-524 to 19a-528,
16 inclusive, as amended by this act. Each such citation shall be in
17 writing, shall provide notice of the nature and scope of the alleged
18 violation or violations and shall be sent by certified mail to the licensee
19 at the address of the nursing home facility in issue. A copy of such

20 citation shall also be sent to the licensed administrator at the address of
21 the facility.

22 Sec. 2. Section 19a-527 of the general statutes is repealed and the
23 following is substituted in lieu thereof (*Effective July 1, 2011*):

24 Citations issued pursuant to section 19a-524, as amended by this act,
25 shall be classified according to the nature of the violation and shall
26 state such classification and the amount of the civil penalty to be
27 imposed on the face thereof. The Commissioner of Public Health shall,
28 by regulation in accordance with chapter 54, classify violations as
29 follows:

30 (a) Class A violations are conditions [which] that the Commissioner
31 of Public Health determines present an immediate danger of death or
32 serious harm to any patient in the nursing home facility. For each class
33 A violation, a civil penalty of not more than five thousand dollars may
34 be imposed;

35 (b) Class B violations are conditions [which] that the Commissioner
36 of Public Health determines present a probability of death or serious
37 harm in the reasonably foreseeable future to any patient in the nursing
38 home facility, but [which he does not find] do not constitute a class A
39 violation. For each [such] class B violation, a civil penalty of not more
40 than three thousand dollars may be imposed.

41 (c) Class C violations are conditions that the Commissioner of Public
42 Health determines constitute failure to comply with the provisions of
43 section 3 of this act, but do not constitute a class A or class B violation.
44 For each class C violation, a civil penalty of not more than one
45 thousand dollars may be imposed.

46 Sec. 3. (NEW) (*Effective July 1, 2011*) (a) As used in this section:

47 (1) "Criminal history and patient abuse background search" or
48 "background search" means a review of the registry of nurse's aides
49 maintained by the Department of Public Health pursuant to section 20-

50 102bb of the general statutes and checks of state and national criminal
51 history records conducted in accordance with section 29-17a of the
52 general statutes.

53 (2) "Direct access" means physical access to a patient or resident that
54 affords an individual with the opportunity to commit abuse or neglect
55 or to misappropriate the property of a patient or resident.

56 (3) "Direct services" means services provided to a patient or resident
57 by an individual that provides such individual with the opportunity to
58 commit abuse or neglect or to misappropriate the property of a patient
59 or resident.

60 (4) "Disqualifying offense" means a conviction of any crime
61 described in 42 USC 1320a-7(a)(1), (2) or (3) or a substantiated finding
62 of neglect, abuse or misappropriation of property by a state or federal
63 agency pursuant to an investigation conducted in accordance with 42
64 USC 1395i-3(g)(1)(C) or 42 USC 1396r(g)(1)(C).

65 (5) "Long-term care agency" means a nursing home, as defined in
66 section 19a-521 of the general statutes, a home health care agency, as
67 defined in section 19a-490 of the general statutes, a homemaker-
68 companion agency, as defined in section 20-670 of the general statutes,
69 an assisted living services agency, as defined in section 19a-490 of the
70 general statutes, an intermediate care facility for the mentally retarded,
71 a chronic disease hospital or an agency providing hospice care.

72 (b) The Department of Public Health shall create and maintain a
73 criminal history and patient abuse background search program in
74 order to facilitate the performance, processing and analysis of the
75 criminal history and patient abuse background search of individuals
76 who have direct access or provide direct services to patients or
77 residents through a long-term care agency.

78 (c) (1) Except as provided in subdivision (2) of this subsection, each
79 long-term care agency, prior to extending an offer of employment to or
80 entering into a contract for the provision of long-term care services

81 with any individual who will have direct access or provide direct
82 services to a patient or resident of the long-term care agency, shall
83 require that such individual submit to a background search. The
84 Department of Public Health shall direct the manner by which (A)
85 long-term care agencies perform the review of the registry of nurse's
86 aides maintained by the department pursuant to section 20-102bb of
87 the general statutes, including requiring long-term care agencies to
88 report the results of such review to the department, and (B)
89 individuals apply for state and local criminal history records checks,
90 including requiring the Department of Public Safety to report the
91 results of such checks to the Department of Public Health.

92 (2) No long-term care agency shall require an individual to submit
93 to a background search if the individual (A) provides evidence to the
94 long-term care agency that such individual submitted to a background
95 search conducted pursuant to subsection (c) of this section not more
96 than three years immediately preceding the date such individual
97 applies for employment or seeks to enter into a contract with the long-
98 term care agency, or (B) will be a volunteer with the long-term care
99 agency, provided such individual will not have direct access or
100 provide direct services to a patient or resident of the long-term care
101 agency.

102 (d) (1) The Department of Public Health shall review all reports
103 provided to the department pursuant to subsection (c) of this section. If
104 any such report contains evidence of a disqualifying offense, the
105 department shall mail written notice by certified mail, return receipt
106 requested, to the individual informing the individual of the
107 disqualifying offense and the opportunity to file a request for a waiver
108 pursuant to subdivisions (2) and (3) of this subsection.

109 (2) An individual may file a written request for a waiver with the
110 department not later than thirty days after the date the department
111 mails notice to the individual pursuant to subdivision (1) of this
112 subsection. The department shall mail a written determination
113 indicating whether the department will grant a waiver pursuant to

114 subdivision (3) of this subsection not later than ten days after the
115 department receives the written request from the individual.

116 (3) The department may grant a waiver from the provisions of
117 subdivision (4) of this subsection to an individual who identifies
118 mitigating circumstances surrounding the disqualifying offense,
119 including (A) inaccuracy in the information obtained from the
120 background search, (B) lack of a relationship between the disqualifying
121 offense and the position for which the individual has applied, (C)
122 evidence that the individual has pursued or achieved rehabilitation
123 with regard to the disqualifying offense, or (D) that substantial time
124 has elapsed since committing the disqualifying offense. The
125 department and its employees shall be immune from liability, civil or
126 criminal, that might otherwise be incurred or imposed, for good faith
127 conduct in granting waivers pursuant to this subdivision.

128 (4) After completing a review pursuant to subdivision (1) of this
129 subsection, the department shall notify in writing the long-term care
130 agency to which the individual has applied for employment or with
131 which the individual has applied to contract (A) of any disqualifying
132 offense and any information the individual provided to the
133 department regarding mitigating circumstances surrounding such
134 offense, and (B) whether the department granted a waiver pursuant to
135 subdivision (3) of this subsection.

136 (e) Notwithstanding the provisions of section 46a-80 of the general
137 statutes, no long-term care agency shall employ an individual required
138 to submit to a background search or contract with any such individual
139 to provide long-term care services if the long-term care agency receives
140 notice from the department that the individual has a disqualifying
141 offense in the individual's background search and the department has
142 not granted a waiver pursuant to subdivision (3) of subsection (d) of
143 this section. A long-term care agency may, but is not obligated to,
144 employ or enter into a contract with an individual who was granted a
145 waiver pursuant to said subdivision (3).

146 (f) (1) Except as provided in subdivision (2) of this subsection, a
147 long-term care agency shall not employ or enter into a contract with
148 any individual required to submit to a background search until the
149 long-term care agency receives notice from the Department of Public
150 Health pursuant to subdivision (4) of subsection (d) of this section.

151 (2) A long-term care agency may employ or enter into a contract
152 with an individual required to submit to a background search before
153 the long-term care agency receives notice from the department that
154 such individual does not have a disqualifying offense on a conditional
155 basis, provided: (A) Employment on a conditional basis shall last no
156 more than sixty days, (B) the long-term care agency has begun the
157 review required under subsection (c) of this section and the individual
158 has applied for checks pursuant to said subsection (c), (C) the
159 individual is subject to direct, on-site supervision during the course of
160 such conditional employment, and (D) the individual affirms in a
161 signed statement that (i) the individual has not committed a
162 disqualifying offense, and (ii) a disqualifying offense reported in the
163 background search required by said subsection (c) shall constitute
164 good cause for termination and a long-term care agency may terminate
165 the individual if a disqualifying offense is reported in said background
166 search.

167 (g) The department may phase in implementation of the criminal
168 history and patient abuse background search program by category of
169 long-term care agency. The provisions of this section shall be effective
170 for each category of long-term care agency on the date notice is
171 published by the Commissioner of Public Health in the Connecticut
172 Law Journal indicating that the commissioner is implementing the
173 criminal history and patient abuse background search program for
174 such category.

175 (h) The department may adopt regulations, in accordance with the
176 provisions of chapter 54 of the general statutes, to implement the
177 provisions of this section.

178 Sec. 4. Section 20-678 of the general statutes is repealed effective the
179 date notice is published by the Commissioner of Public Health in the
180 Connecticut Law Journal indicating that the commissioner is
181 implementing the criminal history and patient abuse background
182 search program for homemaker-companion agencies. (*Effective July 1,*
183 *2011*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	19a-524
Sec. 2	<i>July 1, 2011</i>	19a-527
Sec. 3	<i>July 1, 2011</i>	New section
Sec. 4	<i>July 1, 2011</i>	20-678

Statement of Legislative Commissioners:

Technical changes made to federal citations and reference to chapter 54 in section 3.

AGE

Joint Favorable Subst. C/R

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